

SENATE BILL 851

Unofficial Copy  
Q3

2004 Regular Session  
4r2774  
CF 4r2759

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By: **Senator Brinkley**

Introduced and read first time: February 20, 2004

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Corporations - Addition Modification for Royalty Payments**

3 FOR the purpose of requiring that certain royalty payments be added to the federal  
4 taxable income of a corporation to determine Maryland modified income under  
5 certain circumstances; allowing a subtraction modification for certain royalty  
6 payments received by the taxpayer under certain circumstances; requiring the  
7 Comptroller to waive certain penalties and to assess certain interest at not more  
8 than a certain rate under certain circumstances; providing that no payment is  
9 required with respect to certain taxable years under certain circumstances;  
10 defining certain terms; providing for the application of this Act; and generally  
11 relating to an addition modification for certain royalty payments by certain  
12 corporations.

13 BY adding to  
14 Article - Tax - General  
15 Section 10-306.1  
16 Annotated Code of Maryland  
17 (1997 Replacement Volume and 2003 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Tax - General**

21 10-306.1.

22 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
23 INDICATED.

24 (2) "MAJORITY INTEREST" MEANS:

25 (I) IN THE CASE OF A CORPORATION, MORE THAN 50% OF THE  
26 TOTAL COMBINED VOTING POWER OF ALL CLASSES OF STOCK OF THE CORPORATION  
27 OR MORE THAN 50% OF THE CAPITAL, PROFITS, OR BENEFICIAL INTEREST IN THE  
28 VOTING STOCK OF THE CORPORATION; AND

1 (II) IN THE CASE OF A PARTNERSHIP, ASSOCIATION, TRUST, OR  
2 OTHER ENTITY, MORE THAN 50% OF THE CAPITAL, PROFITS, OR BENEFICIAL  
3 INTEREST IN THE PARTNERSHIP, ASSOCIATION, TRUST, OR OTHER ENTITY.

4 (3) "RELATED MEMBER" MEANS A PERSON, CORPORATION, OR OTHER  
5 ENTITY, INCLUDING AN ENTITY THAT IS TREATED AS A PARTNERSHIP OR OTHER  
6 PASS-THROUGH VEHICLE FOR PURPOSES OF FEDERAL TAXATION, WHETHER THE  
7 PERSON, CORPORATION, OR ENTITY IS A TAXPAYER OR NOT, WHERE ONE SUCH  
8 PERSON, CORPORATION, OR ENTITY, OR SET OF RELATED PERSONS, CORPORATIONS,  
9 OR ENTITIES, DIRECTLY OR INDIRECTLY OWNS OR CONTROLS A MAJORITY INTEREST  
10 IN ANOTHER ENTITY.

11 (4) "ROYALTY PAYMENT" MEANS A PAYMENT DIRECTLY CONNECTED TO  
12 THE USE, MAINTENANCE, OR MANAGEMENT OF LICENSES, TRADEMARKS,  
13 COPYRIGHTS, TRADE NAMES, TRADE DRESS, SERVICE MARKS, MASK WORKS, TRADE  
14 SECRETS, PATENTS, AND ANY OTHER SIMILAR TYPES OF INTANGIBLE ASSETS AS  
15 DETERMINED BY THE COMPTROLLER, AND INCLUDES AMOUNTS ALLOWABLE AS  
16 INTEREST DEDUCTIONS UNDER § 163 OF THE INTERNAL REVENUE CODE TO THE  
17 EXTENT THE AMOUNTS ARE DIRECTLY OR INDIRECTLY FOR, RELATED TO, OR IN  
18 CONNECTION WITH THE USE, MAINTENANCE, OR MANAGEMENT OF THE INTANGIBLE  
19 ASSETS.

20 (5) "VALID BUSINESS PURPOSE" MEANS ONE OR MORE BUSINESS  
21 PURPOSES, OTHER THAN THE AVOIDANCE OR REDUCTION OF TAXATION, THAT  
22 ALONE OR IN COMBINATION CONSTITUTE THE PRIMARY MOTIVATION FOR SOME  
23 BUSINESS ACTIVITY OR TRANSACTION THAT CHANGES IN A MEANINGFUL WAY,  
24 APART FROM TAX EFFECTS, THE ECONOMIC POSITION OF THE TAXPAYER.

25 (B) (1) IN ADDITION TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306  
26 OF THIS SUBTITLE, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE  
27 AMOUNTS UNDER PARAGRAPH (2) OF THIS SUBSECTION ARE ADDED TO THE  
28 FEDERAL TAXABLE INCOME OF A CORPORATION TO DETERMINE MARYLAND  
29 MODIFIED INCOME.

30 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY  
31 OTHERWISE DEDUCTIBLE ROYALTY PAYMENTS IF THE ROYALTY PAYMENTS ARE  
32 DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED TO A RELATED MEMBER  
33 DURING THE TAXABLE YEAR TO THE EXTENT THE ROYALTY PAYMENTS ARE  
34 DEDUCTIBLE IN CALCULATING FEDERAL TAXABLE INCOME.

35 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION MAY  
36 NOT BE REQUIRED IF AND TO THE EXTENT THAT THE ROYALTY PAYMENTS MEET  
37 ANY OF THE FOLLOWING CONDITIONS:

38 (1) (I) THE RELATED MEMBER DURING THE SAME TAXABLE YEAR  
39 DIRECTLY OR INDIRECTLY PAID, RECEIVED, ACCRUED, OR INCURRED THE AMOUNT  
40 TO OR FROM A PERSON THAT IS NOT A RELATED MEMBER;

41 (II) THE TRANSACTION WAS ENTERED INTO FOR A VALID BUSINESS  
42 PURPOSE; AND

1 (III) THE ROYALTY PAYMENTS ARE MADE AT ARM'S LENGTH RATES  
2 AND TERMS;

3 (2) (I) THE RELATED MEMBER RECEIVING THE ROYALTY PAYMENTS  
4 ACQUIRED THE INTANGIBLE ASSETS, FOR WHICH ROYALTY PAYMENTS ARE BEING  
5 MADE, FROM A PERSON OR ENTITY THAT WAS NOT A RELATED MEMBER;

6 (II) THE TRANSACTION WAS ENTERED INTO FOR A VALID BUSINESS  
7 PURPOSE; AND

8 (III) THE ROYALTY PAYMENTS ARE MADE AT ARM'S LENGTH RATES  
9 AND TERMS;

10 (3) THE ROYALTY PAYMENTS ARE PAID OR INCURRED TO A RELATED  
11 MEMBER ORGANIZED UNDER THE LAWS OF A COUNTRY OTHER THAN THE UNITED  
12 STATES, AND THE COUNTRY HAS ENTERED INTO A COMPREHENSIVE INCOME TAX  
13 TREATY WITH THE UNITED STATES;

14 (4) THE RELATED MEMBER RECEIVING THE ROYALTY PAYMENTS IS  
15 SUBJECT TO A TAX MEASURED BY ITS NET INCOME OR RECEIPTS IN A STATE OR  
16 POSSESSION OF THE UNITED STATES IMPOSING A STATUTORY TAX RATE OF AT  
17 LEAST 4.5%; OR

18 (5) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENTS  
19 BETWEEN THE TAXPAYER AND THE RELATED MEMBER HAS A VALID BUSINESS  
20 PURPOSE, OTHER THAN THE AVOIDANCE OF THE PAYMENT OF INCOME TAXES AS  
21 DETERMINED UNDER REGULATIONS PROMULGATED BY THE COMPTROLLER, AND  
22 THE PAYMENTS ARE MADE AT ARM'S LENGTH RATES AND TERMS.

23 (D) FOR THE PURPOSE OF COMPUTING MARYLAND MODIFIED INCOME, A  
24 TAXPAYER SHALL BE ALLOWED TO SUBTRACT ROYALTY PAYMENTS DIRECTLY OR  
25 INDIRECTLY RECEIVED FROM A RELATED MEMBER DURING THE TAXABLE YEAR TO  
26 THE EXTENT THE PAYMENTS ARE INCLUDED IN THE TAXPAYER'S FEDERAL TAXABLE  
27 INCOME, UNLESS THE ROYALTY PAYMENTS WOULD NOT BE REQUIRED TO BE ADDED  
28 BACK BY THE TAXPAYER UNDER THIS SECTION OR ANY OTHER PROVISIONS IN THIS  
29 SUBTITLE.

30 SECTION 2. AND BE IT FURTHER ENACTED, That:

31 (a) The Comptroller shall administer a Settlement Period from July 1, 2004,  
32 through December 31, 2004.

33 (b) The Settlement Period shall be applicable to the Maryland corporation  
34 income tax that has been or may be assessed by the Comptroller as a result of the  
35 Maryland Court of Appeals decisions in Comptroller of the Treasury v. SYL, Inc., and  
36 Comptroller of the Treasury v. Crown Cork & Seal Company (Delaware), Inc., 375 Md.  
37 78 (2003).

38 (c) (1) A taxpayer may elect whether to have additional income tax  
39 calculated as though otherwise deductible payments were added back to the paying

1 taxpayer's federal taxable income, or as though the receiving taxpayer were subject to  
2 the Maryland corporation income tax.

3           (2)       The Maryland income tax may not be calculated more than once for  
4 the same transaction.

5       (d)       The Comptroller shall waive all penalties attributable to the taxes paid  
6 during the Settlement Period.

7       (e)       The Comptroller shall assess interest on taxes paid during the Settlement  
8 Period at a rate not to exceed 6.5%.

9       (f)       If all taxes and related interest described above are paid during the  
10 Settlement Period for the taxpayer's taxable years beginning on or after January 1,  
11 1996, and ending on or before December 31, 2003, then no payment is required with  
12 respect to taxable years beginning before January 1, 1996, during the Settlement  
13 Period or in any other action by the Comptroller.

14       SECTION 3. AND BE IT FURTHER ENACTED, That, except as provided in  
15 Section 2 of this Act, this Act shall take effect July 1, 2004, and shall be applicable to  
16 all taxable years beginning after December 31, 2004.